

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION NO.6363 of 2005.
IN
FIRST APPEAL NO.1666 OF 2006.

Office notes, office
memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders.

Court's or Judge's orders.

Ms.Ratna Bhargavan i/by M/s.R.Bhargavan &
Associates for the Applicant.

Shri Suresh Sabrad for the Respondent No.7.

CORAM : ABHAY S.OKA, J.

DATED : 2nd August, 2006.

P.C.:

1. Heard the learned Advocates appearing for the parties. The Applicant is the insurer of the vehicle involved in the accident. The defence of the Applicant was that the Applicant was not liable to satisfy the award which is made against the insured on the ground that there is breach of the terms and conditions of the policy of insurance. It is a well settled position of law that burden to prove breach of terms and conditions of policy is on the Insurance Company. The finding of the Tribunal is that the burden is not discharged by the Applicant and hence the applicant is held liable to satisfy the award which is made against the insured.

2. Even if the Applicant succeeds in the Appeal, the award against the insured will remain. Therefore, even if the compensation is paid by the insurance company, in the event of succeeding in the Appeal, the Applicant can always recover the compensation amount from the insured. In the fight between the Insured and the Insurance Company, the original Claimant cannot be made to suffer. Hence subject to what is stated above, no case is made out for grant of interim relief. The Application is rejected.

3. It is clarified that the payment of compensation by the Applicant will be subject to the final outcome of the Appeal.

Judge.